

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHERYL CLARK, individually,  
as successor-in-interest to  
Delaine Stowell, on behalf of  
the estate of Delaine  
Stowell, and on behalf of the  
class,

Plaintiff,

v.

TRANSAMERICA LIFE INSURANCE  
COMPANY, an Iowa corporation,

Defendant.

No. 2:20-cv-00539-JAM-DB

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

This matter is before the Court on Transamerica Life Insurance Company's ("Defendant") Motion to Dismiss for failure to state a claim upon which relief can be granted. Mot. to Dismiss ("Mot."), ECF No. 22. Sheryl Clark ("Plaintiff") filed an opposition to Defendant's motion, Opp'n, ECF No. 24, to which Defendant replied, Reply, ECF No. 25. After consideration of the parties' briefing on the motion and relevant legal authority, the Court GRANTS Defendant's Motion to Dismiss.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for August 11, 2020.

## I. BACKGROUND

This dispute centers around the applicability and reach of California Insurance Code §§ 10113.71 and 10113.72. First Amended Compl. ("FAC") ¶ 2, ECF No. 19. Section 10113.71 governs grace periods and notice of termination of a policy. See Cal. Ins. Code § 10113.71. Section 10113.72 governs which individuals are to receive notice of lapse or termination of a policy and notice of the right to change the written designation. See Cal. Ins. Code § 10113.72. Plaintiff alleges Defendant refused to comply with these mandatory provisions of the California Insurance Code and, in so doing, is in breach of contract, has engaged in unfair competition, and has committed financial elder abuse. See FAC ¶¶ 96-104, 105-17, 118-26.

Plaintiff is a beneficiary of her deceased mother's life insurance policy. FAC ¶ 12. Sometime around 1992, Plaintiff's mother purchased coverage under a group policy issued to J.C. Penney Company. FAC ¶¶ 37, 39. The group policy was governed by Illinois law. FAC ¶ 39. The value of the coverage was \$12,000.00 and the premium was \$16.12 per month. FAC ¶ 38. Plaintiff's mother paid the premium for 26 years. FAC ¶ 43. Defendant allegedly failed to provide Plaintiff's mother with the right to designate another recipient of policy notices, including a thirty-day notice of any effective lapse or the right to a sixty-day grace period, and otherwise concealed information from Plaintiff and her mother, in violation of the aforementioned sections of the California Insurance Code. FAC ¶¶ 51-55.

Defendant allegedly attempted to lapse or terminate

1 coverage around July of 2018. FAC ¶ 55. Plaintiff has no  
2 record of her mother receiving any notices of missed premium  
3 payments or impending lapse. Id. Plaintiff's mother passed  
4 away on August 7, 2018. FAC ¶ 56. At some point thereafter,  
5 Plaintiff submitted a claim to Defendant for the life insurance  
6 death benefits. FAC ¶ 57. The claim was initially denied due  
7 to nonpayment of premiums. Id. Defendant's initial denial was  
8 in error. Edwards Decl. ¶ 10, ECF No. 22-2. Defendant is now  
9 making full payment of the life insurance death benefits and  
10 accrued interest to Plaintiff. Id.

11  
12 II. OPINION

13 A. Judicial Notice

14 Defendant requests judicial notice of the following:  
15 (1) Group Policy No. 25222, the group life insurance policy  
16 issued and delivered to J.C. Penney Company; (2) Delaine  
17 Stowell's May 7, 1992 Enrollment Form; (3) Delaine Stowell's  
18 June 13, 1993 Enrollment Form for Additional Benefits;  
19 (4) Records from the California and Delaware Secretary of State  
20 reflecting J.C. Penney Company's January 25, 2002 legal name  
21 change; (5) Records from the California and Vermont Secretary of  
22 State reflecting J.C. Penney Life Insurance Company's legal name  
23 change; (6) Records from the Vermont Secretary of State  
24 reflecting that Stonebridge Life Insurance Company legally  
25 merged into Transamerica Life Insurance Company on October 1,  
26 2015; (7) Merger Endorsement for Certificate Insurance No.  
27 74LB810725; (8) Certificate of Insurance No. 74LB810725  
28 effective May 20, 1992; (9) Records from the California

1 Secretary of State reflecting that Defendant is an Iowa  
2 corporation with its principal place of business in Cedar  
3 Rapids, Iowa; (10) July 25, 2018 Billing Summary reflecting the  
4 ability to pay the premiums to maintain the Certificate of  
5 Insurance No. 74LB810725; (11) the legislative history of  
6 Assembly Bill 1747. Def.'s Request for Judicial Notice ("Def.'s  
7 RJN"), ECF No. 22-1. Plaintiff requests the Court take judicial  
8 notice of the same legislative history and records from the  
9 California Secretary of State reflecting J.C. Penney Company's  
10 registration as a domestic stock corporation. Pl.'s Request for  
11 Judicial Notice ("Pl.'s RJN"), ECF No. 24-1.

12 Rule 201 of the Federal Rules of Evidence allows a  
13 court to take judicial notice of an adjudicative fact that  
14 is "not subject to reasonable dispute," because it (1) "is  
15 generally known within the trial court's territorial  
16 jurisdiction"; or (2) "can be accurately and readily  
17 determined from sources whose accuracy cannot reasonably be  
18 questioned." Fed. R. Evid. 201(a)-(b). "[A]s a general  
19 rule, a district court may not consider materials not  
20 originally included in the pleadings in deciding a Rule 12  
21 motion . . . [but] it 'may take judicial notice of matters  
22 of public record' and consider them without converting a  
23 Rule 12 motion into one for summary judgment." United  
24 States v. 14.02 Acres of Land, 547 F.3d 943, 955 (9th Cir.  
25 2008) (quoting Lee v. City of Los Angeles, 250 F.3d 668, 688  
26 (9th Cir. 2001)). However, courts may not take judicial  
27 notice of "disputed facts stated in public records." See  
28 Lee, 250 F.3d at 690. A court may also consider materials

1 incorporated into the complaint. Cotto Settlement v.  
2 Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010). The  
3 doctrine of incorporation by reference includes "situations  
4 where the complaint necessarily relies upon a document or  
5 the contents of the document are alleged in a complaint, the  
6 document's authenticity is not in question and there are no  
7 disputed issues as to the document's relevance." Id.

8 Judicial notice of Group Policy No, 25222, Delaine  
9 Stowell's Enrollment Forms, the Merger Endorsement for  
10 Certificate of Insurance No. 74LB810725, the Certificate of  
11 Insurance No. 74LB810725, and the July 25, 2018 Billing  
12 Summary is appropriate under the incorporation by reference  
13 doctrine. Plaintiff's FAC is premised on her claim that  
14 Defendant violated California Insurance Code §§ 10113.71 and  
15 10113.72 as they apply to her mother's life insurance  
16 coverage. As a result, the FAC references and relies upon  
17 Plaintiff's mother enrolling in J.C. Penney Company's group  
18 life insurance policy, which Defendant subsequently  
19 acquired, and Defendant failing to provide an extended  
20 period for premium payments. See, e.g., FAC ¶¶ 37, 39, 41,  
21 54. Plaintiff's argument that the July 25, 2018 Billing  
22 Summary' authenticity is in question is without merit. See  
23 Pl.'s Opp'n to Def.'s RJN at 1-2, ECF No. 24-2.

24 Judicial notice of the records from the California,  
25 Delaware, and Vermont Secretaries of State, as well as the  
26 legislative history of Assembly Bill 1714, is also  
27 appropriate as these are all matters of public record. See  
28 Gerritsen v. Warner Bros. Entm't Inc., 112 F.Supp.3d 1011,

1 1034 (C.D. Cal. 2015) (taking judicial notice of facts in a  
2 business entity profile on the California Secretary of  
3 State's website); see also Hansen Beverage Co. v. Innovation  
4 Ventures, LLC, Case NO. 08-CV-1166, 2009 WL 6597891 at \*1  
5 (S.D. Cal. 2009) (judicial notice of public records and  
6 government documents available from reliable sources on the  
7 Internet such as websites run by governmental agencies is  
8 proper).

9 Accordingly, the Court GRANTS Defendant and Plaintiff's  
10 requests for judicial notice.

11 B. Legal Standard

12 A Rule 12(b)(6) motion attacks the complaint as not  
13 alleging sufficient facts to state a claim for relief. "To  
14 survive a motion to dismiss [under 12(b)(6)], a complaint must  
15 contain sufficient factual matter, accepted as true, to state a  
16 claim to relief that is plausible on its face." Ashcroft v.  
17 Iqbal, 556 U.S. 662, 679 (2009) (internal quotation marks and  
18 citation omitted). Dismissal is proper where there is no  
19 cognizable legal theory or insufficient facts supporting a claim  
20 entitling the plaintiff to relief. Hinds Invs., L.P. v.  
21 Angiolo, 654 F.3d 846, 850 (9th Cir. 2011).

22 C. Analysis

23 Defendant argues Plaintiff has failed to state a claim for  
24 relief as California Insurance Code §§ 10113.71 and 10113.72 do  
25 not apply to her mother's policy: a group policy neither issued  
26 nor delivered in California. See Mot. at 9-15. Defendant  
27 contends § 10113.71 only applies to life insurance policies  
28 issued or delivered in California, and § 10113.72 only applies

1 to individual life insurance policies. Id. Plaintiff does not  
2 dispute this directly. Instead, Plaintiff argues the provisions  
3 apply to all policies in effect in 2013 and conflict of law and  
4 renewal principles support applying the provisions to  
5 Plaintiff's mother's policy. See Opp'n at 4-12. Plaintiff also  
6 argues that Defendant is mistaken in classifying her mother's  
7 policy as a group policy. See Opp'n at 13-15.

8 In 1991, J.C. Penney Company, a Delaware corporation  
9 located in Illinois, applied for a group life insurance policy  
10 from J.C. Penney Life Insurance Company. See Group Policy, Ex.  
11 1 to Edwards Decl. at 7-8, ECF No. 22-2. J.C. Penney Life  
12 Insurance Company issued and delivered Group Policy No. 25222 to  
13 J.C. Penney Company in Illinois. Id. Under the terms of the  
14 group policy, individuals age thirty to seventy-five who are  
15 credit card holders with J.C. Penney Company, or their spouses,  
16 could enroll in the group life insurance coverage. Id. at 9.  
17 Upon doing so, they would be issued a Certificate of Insurance  
18 as evidence of enrollment under the group policy. Id.  
19 Plaintiff's mother enrolled in this policy. See Enrollment  
20 Form, Ex. 2 to Edwards Decl. at 15-16, ECF No. 22-2.

21 Section 10113.71 of the California Insurance Code provides  
22 that any life insurance policy "issued or delivered in  
23 [California]" must contain a provision for at least a sixty-day  
24 grace period and notice of pending lapse and termination at  
25 least thirty days prior. See Cal. Ins. Code § 10113.71(a)-(b).  
26 Section 10113.71 applies to individual and group life insurance  
27 policies. See Cal. Ins. Code § 10113.71(c). Section 10113.72  
28 of the California Insurance Code specifies that "an individual

1 life insurance policy" shall not be issued or delivered in  
2 California until the applicant has been given the opportunity to  
3 designate at least one other person to receive notice of lapse  
4 or termination of a policy. See Cal. Ins. Code § 10113.72(a).  
5 It also specifies that "[n]o individual life insurance policy  
6 shall lapse or be terminated for nonpayment of premium" unless  
7 the insurer gives at least 30-days notice to the policy owner  
8 and other designated persons. See Cal. Ins. Code § 10113.72(c).

9 Group life insurance is purchased under a single contract  
10 and issued to an entity covering a specified group of people.  
11 See, e.g., Heighley v. J.C. Penney Life Ins. Co., 257 F.Supp.2d  
12 1241, 1246-47, 1251 (C.D. Cal. 2003). Here, J.C. Penney Company  
13 is the group life insurance policy owner. See Group Policy, Ex.  
14 1 to Edwards Decl. at 7-8. Its group policy covers eligible  
15 members of the group who enroll, i.e., J.C. Penney Company  
16 credit card holders. Id. at 9. An eligible person who enrolls  
17 receives a Certificate of Insurance. Id. The Certificate of  
18 Insurance serves as proof of insurance, but it is not the actual  
19 insurance policy. Id.

20 Thus, Plaintiff's mother enrolled in a group life insurance  
21 policy, but was not, herself, the policy holder. The group  
22 policy was issued and delivered to J.C. Penney Company in  
23 Illinois. The plain text of § 10113.71 makes clear that its  
24 provisions only apply to group or individual life insurance  
25 policies issued or delivered in California. Cal. Ins. Code  
26 § 10113.71(a). And the plain text of § 10113.72 clearly  
27 establishes that its provisions only apply to individual life  
28 insurance policies. Cal. Ins. Code § 10113.72(a). The life



1 insurance policy in question was neither issued or delivered in  
2 California nor is it an individual policy. Therefore, it is not  
3 covered by either section of the California Insurance Code.

4 Accordingly, Plaintiff's breach of contract, unfair  
5 competition, and elder abuse claims, which all rely upon  
6 Defendant's alleged violations of §§ 10113.71 and 10113.72,  
7 necessarily fail as a matter of law. Plaintiff's declaratory  
8 relief claims fail for the same reason.

9 D. Leave to Amend

10 The Court need not grant leave to amend where amendment  
11 would be futile. Deveraturda v. Globe Aviation Sec. Servs., 454  
12 F.3d 1043, 1049 (9th Cir. 2006). For the reasons described  
13 above, the Court finds that Plaintiff's claims cannot be  
14 salvaged by amendment. Accordingly, dismissal with prejudice is  
15 appropriate.

16  
17 III. ORDER

18 Defendant's Motion to Dismiss is GRANTED WITH PREJUDICE.

19 The Clerk of the Court is directed to close the case.

20 IT IS SO ORDERED.

21 Dated: August 28, 2020

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24 JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE  
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